

**Notice of Allowability**

Application No.

10/647,268

Applicant(s)

OSUMI ET AL.

Examiner

Art Unit

Medina A. Ibrahim

1638

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--**

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to telephone interview of 10/24/05.
2. ☒ The allowed claim(s) is/are 1-9 and 11-15, renumbered as 1-14, respectively.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some\* c) ☐ None of the:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
- (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
- 1) ☐ hereto or 2) ☐ to Paper No./Mail Date \_\_\_\_\_.
- (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

**Attachment(s)**

1. ☒ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO-1449 or PTO/SB/08), Paper No./Mail Date \_\_\_\_\_
4. ☐ Examiner's Comment Regarding Requirement for Deposit of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☒ Interview Summary (PTO-413), Paper No./Mail Date \_\_\_\_\_
7. ☒ Examiner's Amendment/Comment
8. ☐ Examiner's Statement of Reasons for Allowance
9. ☐ Other \_\_\_\_\_

### EXAMINER'S AMENDMENT

An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Curtis Ribando on 10/24/05.

The application has been amended as follows:

In The Claims:

Claim 1 (Currently amended): An isolated nucleic acid molecule encoding a plant disease resistance polypeptide, wherein the nucleic acid molecule is selected from the group consisting of:

(a) a nucleic acid molecule with the polypeptide coding sequence of SEQ ID NO: 1 from nucleotide 52 to nucleotide 3018.

(b) a nucleic acid molecule which encodes [a polypeptide having] SEQ ID NO: 2, SEQ ID NO: 4 or SEQ ID NO: 10.

(c) the nucleic acid molecule of [as shown] SEQ ID NO: 1, SEQ ID NO: 3 or SEQ ID NO: 9.

Claim 3. (Currently amended): A [The] nucleic acid construct comprising the isolated [a] nucleic acid molecule of SEQ ID NO: 1 or SEQ ID NO: 3 [claim 1] operably

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linked to one or more control sequences [which direct the product of a plant disease resistance polypeptide in an expression host].

Claim 4 (Currently amended): An isolated host [A] cell transformed with the isolated nucleic acid molecule of claim 1.

At claims 7-8, ---, --- has been inserted before "wherein".

Claim 11 (Currently amended): A method of conferring or enhancing [a plant's ] resistance in a plant, plant part or plant cell to a fungal pathogen, which comprises transforming the [a] plant, plant part, or plant cell, with one or more of the isolated nucleic acid molecule[s] of claim 1.

Claim 15 (Currently amended): A method for producing a plant disease resistance polypeptide, which comprises cultivating the host cell of claim 4 [a recombinant host cell comprising transformed cell having a nucleic acid molecule of claim 1 which encodes a plant disease resistance polypeptide,] under conditions suitable for production of the polypeptide; and recovering the polypeptide.

At claims 12-14, ---, --- has been inserted before "wherein".

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**Contact information**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Medina A. Ibrahim whose telephone number is (571) 272-0797. The Examiner can normally be reached Monday -Thursday from 8:00AM to 5:30PM and every other Friday from 9:00AM to 5:00 PM . Before and after final responses should be directed to fax nos. (703) 872-9306 and (703) 872-9307, respectively.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Dr. Amy Nelson, can be reached at (571) 272-0804.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Mai

10/24/05

MEDINA A. IBRAHIM  
PATENT EXAMINER

*Medina A. Ibrahim*